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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case Nos. 08-13555 (JMP) ; 08-01420 (JMP) (SIPA)
- - - - -x
In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.
Debtors.
- - - - -x
In the Matter of:

LEHMAN BROTHERS INC.
Debtor.
- - - - -x
United States Bankruptcy Court
One Bowling Green
New York, New York

October 20, 2010
10:06 AM

B E F O R E:
HON. JAMES M. PECK
U.S. BANKRUPTCY JUDGE

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HEARING re Motion of Capital One, N.A. for Relief from the
Automatic Stay

HEARING re Motion of Alpine Bank for Relief from the Automatic
Stay

HEARING re Motion of Lehman Brothers Special Financing Inc. for
Enforcement of the Automatic Stay and for Sanctions for
Violation of the ADR Procedures Order

HEARING re Motion of Debtors for Authorization and Approval of
the Global Settlement Among the Debtors and the Ambac Settling
Parties

HEARING re Motion of the Debtors for Authority to Enter into
Settlement with SunCal Trustee on Behalf of SunCal Involuntary
Debtors

HEARING re Debtors' Motion for Approval of a Settlement
Agreement Among LBSF, LBHI, and Societe Generale, New York
Branch and Certain Related Relief

HEARING re Debtors' Motion to Stay Avoidance Actions and Grant
Certain Related Relief

1
2 HEARING re Lehman Brothers Special Financing Inc.'s Motion for
3 Expedited Discovery Pursuant to Bankruptcy Rules 7026 and 9014
4

5 SECURITIES INVESTOR PROTECTION CORPORATION PROCEEDINGS:

6 HEARING re Motion of Newport Global Opportunities Fund (Master)
7 L.P. and Newport Global Opportunities Fund L.P. for Entry of an
8 Order Authorizing Newport to File Under Seal the Motion for
9 Leave to Conduct Rule 2004 Discovery and Certain Exhibits
10 Thereto
11

12 HEARING re Motion of Newport Global Opportunities Fund (Master)
13 L.P. and Newport Global Opportunities Fund L.P. for Leave to
14 Conduct Rule 2004 Discovery
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25 Transcribed by: Lisa Bar-Leib

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1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: Be seated, please. Good morning. Good
4 morning, Mr. Miller.

5 MR. HARVEY MILLER: Good morning, Your Honor. Harvey
6 Miller, Weil Gotshal & Manges on behalf of the debtors. This
7 is an omnibus hearing, Your Honor, in the Lehman cases.
8 Referring to the agenda, Your Honor, we have a number of
9 uncontested matters. Items 1 and 2, which are motions by
10 Capital One, N.A. and a motion by Alpine Bank for modification
11 of the automatic stay. These have been resolved, Your Honor.
12 There are no appearances by the moving parties. We've been
13 authorized to represent to the Court that it's been resolved.
14 Stipulations are in the process of being prepared and will be
15 submitted to the Court either this afternoon or tomorrow.

16 THE COURT: I see Mr. Ostrow standing. I don't know
17 if he's standing for either of these matters or if, for some
18 reason, he needed to stretch.

19 MR. OSTROW: Good morning, Your Honor. Alec Ostrow
20 from Becker, Glynn, Melamed & Muffly for Alpine Bank. I don't
21 disagree with what Mr. Miller said. I'm just here, Your Honor,
22 because we are very close to resolving the matter. We have the
23 debtors' attention and I don't want to lose it. If we can't
24 get to final resolution, I'd like the opportunity to bring this
25 back up on very short notice. That's all.

1 THE COURT: Okay. You've said what you've said. I'm
2 not commenting further.

3 MR. HARVEY MILLER: It will be resolved, Your Honor.

4 THE COURT: I expect so.

5 MR. OSTROW: Thank you.

6 MR. HARVEY MILLER: Your Honor, number 3 is a motion
7 by Lehman Brothers Special Financing Inc. to enforce the
8 automatic stay and for sanctions for violations of the ADR
9 procedures order. The respondents, Your Honor, PT Mobile-8,
10 which is in Indonesia, has taken the position Your Honor has no
11 jurisdiction over it. And we're moving forward, Your Honor.
12 There's a declaration by my associate, Holly Loiseau who is
13 here in court if Your Honor would like some further information
14 as to this motion.

15 THE COURT: I looked pretty carefully at this. Are
16 one of the issues of service or this is just a situation where
17 the Mobile-8 entity in Indonesia is thumbing its nose that
18 everything that goes on in this court?

19 MR. HARVEY MILLER: Your Honor, may I introduce Ms.
20 Loiseau? She is (indiscernible) in this matter.

21 THE COURT: Fine. Yes. Welcome.

22 MS. LOISEAU: Good morning, Your Honor. Holly Loiseau
23 for the debtors. Yes, Your Honor. What has occurred with this
24 case is that the PT Mobile-8 was involved with the ADR
25 procedures process. And they responded to the notice. We held

1 three additional settlement conferences with them by phone.
2 And then they refused to respond to the court-appointed
3 mediator for mediation. And then, on September 10th, the
4 debtor received a copy of the complaint that had been filed
5 apparently in May of 2010 in the Jakarta court. The
6 counterparty here was in full knowledge of the debtor's
7 bankruptcy case because they had been participating in the ADR
8 procedures process.

9 In addition, we have delivered notice of this motion
10 by e-mail, facsimile and by overnight mail. We also delivered
11 a letter before we filed the motion saying that the Jakarta
12 action that they had filed was in violation of the automatic
13 stay and asking that they withdraw it immediately because it
14 was in violation of the stay. The counterparty -- their
15 counsel refused to accept hand-delivery of that letter on
16 several occasions. We had obtained local counsel on behalf of
17 the debtors in Jakarta who are very familiar with this
18 particular counsel for the counterparty and they refused to
19 accept service of that letter.

20 THE COURT: Okay. Based upon your representations,
21 there seems to be no doubt that Mobile-8 has actual notice of
22 the bankruptcy, participated to some extent in the ADR
23 procedures and, presumably by design, decided to ignore the
24 authority of the bankruptcy court and to take steps to protect
25 itself under local law. I have no further questions of you. I

1 understand the situation.

2 MS. LOISEAU: Thank you, Your Honor.

3 THE COURT: This is, at this point, an uncontested
4 motion of Lehman Brothers Special Financing to enforce the
5 automatic stay and for sanctions. It's unopposed and the
6 motion will be granted. What happens thereafter, I leave to
7 the debtors.

8 MS. LOISEAU: Thank you, Your Honor.

9 THE COURT: What will happen at this point?

10 MS. LOISEAU: Well, Your Honor, the debtors have filed
11 an adversary proceeding as well with respect to the amounts
12 that are owed by this counterparty which is approximately 4.6
13 million dollars plus interest. And the debtors will proceed
14 with whatever avenues they -- are available to them to try to
15 enforce that judgment and to recover the amounts payable to the
16 estate.

17 THE COURT: And I take it that you're taking
18 appropriate steps in Jakarta with local counsel to pursue all
19 remedies.

20 MS. LOISEAU: What we have done is our first move was
21 to come to this court which we believe is the appropriate court
22 to decide all matters with respect to claims against the
23 debtor. And -- but we have retained local counsel to advise us
24 on the procedures and the process there --

25 THE COURT: Okay.

1 MS. LOISEAU: -- and what impact this judgment might
2 have -- a judgment from this Court would have.

3 THE COURT: All right. Fine. Good luck.

4 MS. LOISEAU: Thank you.

5 MR. HARVEY MILLER: If Your Honor please, for the
6 fourth uncontested matter, Jones Day appears on behalf of the
7 debtor.

8 (Pause)

9 MS. SISITSKY: Good morning, Your Honor. Aviva
10 Sisitsky of Jones Day for the debtors on the uncontested matter
11 of the motion by Lehman Brothers Holdings and its affiliated
12 debtors for authorization and approval for the settlement
13 agreement with Ambac Assurance Corporation and certain related
14 Ambac entities.

15 The global settlement agreement as described in the
16 motion provides that Ambac will be withdrawing all sixty of its
17 proofs of claim filed in the debtors' Chapter 11 cases which
18 relate to complex residential mortgage-backed securities
19 transactions and which, in the aggregate, exceeds 6.1 billion
20 dollars.

21 The global settlement agreement also provides for a
22 general release by each party of the other party and certain
23 related entities and resolves the issues involved in three
24 contested credit derivative contracts in which Ambac provided
25 financial guaranty insurance contracts.

1 Your Honor, the motion and accompanying declaration of
2 Daniel Ehrmann was filed on October 5th. No objections have
3 been filed and none received as of this morning. Proper notice
4 was provided in accordance with the claim settlement procedures
5 established by this Court in its March 31st, 2010 order. And
6 the affidavit of service has also been filed. The creditors'
7 committee also supports this motion, Your Honor, and the global
8 settlement agreement.

9 Two points on the motion, if I may quickly. The
10 parties reached final documentation and execution of the global
11 settlement agreement subsequent to the October 5th filing of
12 the motion. Upon execution of the global settlement agreement,
13 the parties mutually agreed to add signatories to both sides.
14 The motion which summarizes in detail the salient terms of the
15 global settlement remains unchanged. This is a technical
16 point, Your Honor. Accordingly, there are now thirteen Ambac
17 related entities that are signatories and all of the Lehman
18 debtors are also signatories.

19 We had conducted an investigation by reviewing the
20 debtors' schedules and have spoken to our client and consent
21 that there are no claims by these additional debtor schedules.
22 Thus, we are here today on behalf of all the debtors asking for
23 Your Honor's approval of the global settlement agreements to
24 which they all are now parties.

25 We've amended the proposed order to reflect this

1 technical change. And if I may approach, I'm happy to hand up
2 the proposed order along with the blackline.

3 THE COURT: Yes. You may approach.

4 (Pause)

5 MS. SISITSKY: I also wanted to mention that the
6 global settlement agreement, Your Honor, is subject to two
7 approvals: Your Honor's approval and the approval of the
8 circuit court of Dane County of Wisconsin or the rehabilitation
9 court in which Ambac is engaged in their rehabilitation
10 proceeding. The global settlement agreement provides that the
11 settlement becomes effective upon the approval of both Courts.
12 We should have participating by telephone counsel for Ambac
13 parties and counsel for the Office of the Commissioner of
14 Insurance. That's my understanding that they were planning on
15 participating by phone. And they can explain the process in
16 the rehabilitation court for getting the approval and that
17 prosecution of the plan of rehabilitation filed in the Ambac's
18 rehabilitation proceedings on October 8th would not affect the
19 global settlement agreement.

20 THE COURT: Let's take a moment and find out if
21 anyone's on the phone from Wisconsin who wishes to speak up to
22 this issue.

23 MR. VAN SICKLEN (TELEPHONICALLY): Yes, Your Honor.
24 My name is Mike van Sicklen. I'm a partner at the law firm of
25 Foley & Lardner. I'm appearing telephonically this morning

1 from Madison, Wisconsin. We represent the Wisconsin
2 Commissioner of Insurance both as the regulator of Ambac
3 Assurance Corporation and as a court-appointed rehabilitator of
4 the segregated account of Ambac Assurance. Are you able to
5 hear me okay, Your Honor?

6 THE COURT: Loud and clear, thank you.

7 MR. VAN SICKLEN: Okay. Just three very brief points.
8 The commissioner here in Wisconsin supports approval both in
9 your court and in our court of the global settlement agreement.
10 We think it makes imminent sense. It avoids protracted
11 litigation with very uncertain outcomes of both sides. It's a
12 mutual release.

13 Secondly, we have filed already earlier this week a
14 parallel application for approval with our Wisconsin
15 rehabilitation court of the agreement. It's set for a hearing
16 here in Wisconsin on November 5th with a prior deadline for
17 filing any objections. If none are received, we will ask Dane
18 County Circuit Court to approve our entry through the
19 commissioner into the settlement on October 31st. There was a
20 reference by counsel for Lehman Brothers a minute ago about our
21 pending plan for confirmation, the rehabilitation that we've
22 promulgated on behalf of the commissioner. We do not think
23 that how that process unfolds at confirmation will alter or
24 impair the effectiveness of the global settlement being entered
25 into by the commissioner or Ambac both of which are

1 signatories.

2 So I'm happy to field any questions you have, Your
3 Honor. But we're anticipating a smooth approval process at
4 this hearing.

5 THE COURT: Okay. Thank you.

6 MR. YOUNG (TELEPHONICALLY): Your Honor, this is
7 Bennett Young of Dewey & LeBoeuf in San Francisco. I represent
8 Ambac Assurance Corporation and its affiliates. And I agree
9 with the statements that Mr. van Sicklen has just made
10 regarding the (indiscernible). I just wanted to note my
11 appearance for Your Honor.

12 THE COURT: All right. Thank you very much. This may
13 be a good time to hear from counsel for the committee to the
14 extent that there's any comment to be made on this. Or if you
15 don't need to speak, you don't have to, but it seems like a
16 logical time since we're hearing from other parties.

17 MR. O'DONNELL: Your Honor, Dennis O'Donnell, Milbank,
18 Tweed, Hadley & McCloy on behalf of the committee. Not much to
19 say, Your Honor. We agree. We support the settlement. It was
20 evaluated by both our derivative subcommittee and the full
21 committee and we believe that it's a good settlement for the
22 debtors.

23 THE COURT: Okay. Fine.

24 MS. SISITSKY: One last thing, Your Honor. Attached
25 to the motion is Mr. Ehrmann's written declaration which could

1 be treated as his testimony for hearing if Your Honor wishes.
2 Otherwise, I'm happy to proffer his testimony.

3 THE COURT: You can do it but I've seen the
4 declaration on the record and this not only uncontested but
5 seems to be broadly supported by parties in interest. And the
6 fact that it has been reviewed by the creditors' committee and
7 found acceptable is also very helpful. It's obviously a
8 settlement that benefits both this estate and the Ambac
9 rehabilitation that was the cause of (indiscernible) endorsing
10 it on both sides. And I accept the declaration that has been
11 filed as the functional equivalent of Mr. Ehrmann's testimony.

12 MS. SISITSKY: Thank you, Your Honor. And then I
13 think we're prepared to rest on our papers at this point and we
14 ask this Court to approve the motion and enter the proposed
15 order.

16 THE COURT: I approve and I will enter the order.

17 MS. SISITSKY: Thank you.

18 THE COURT: One thing before I hear from Mr. Perez and
19 before you leave. The order that was handed up doesn't have a
20 disk attached so that if you have another disk maybe we can
21 allow Weil Gotshal to act as the (indiscernible) but at counsel
22 table so that I can then (indiscernible). Thank you.

23 MS. SISITSKY: Thank you, sir.

24 MR. PEREZ: Good morning, Your Honor. Alfredo Perez
25 on behalf of the debtors. Your Honor, I'm here on the only

1 group of SunCal cases that I haven't been here on before.
2 There was the matters that we were here on the last time which
3 we called the Core I matters. The Court approved the
4 settlement that was -- there's a motion to approve the
5 settlement agreement in the SunCal cases scheduled for late
6 December. There is a hearing on the disclosure statement in
7 that case scheduled for early December. Then there are the
8 SunCal voluntary cases which were the subject of several
9 hearings in this court. Those are on appeal to the Second
10 Circuit. Judge -- one of the -- Judge Cabranes expedited the
11 appeal so our brief is due next week and the matter is set to
12 be argued at the beginning of December.

13 Your Honor, with respect to these cases, which we call
14 the involuntary cases or the trustee cases, the debtor has
15 entered into a settlement agreement that will be incorporated
16 into a plan. The total debt with respect to these cases is
17 about a billion one. There are six loans but I think there are
18 seven properties that are actually covered by the loans, Your
19 Honor.

20 In essence, the settlement agreement would provide for
21 (a) the conveyance of the property to Lehman entities; (b) the
22 funding of a plan by the Lehman entities which -- and the plan
23 basically has two components. One is the expenses and one is
24 the payment of creditors. The creditors will be paid on a
25 sliding scale depending on what time they incurred their debt

1 or whether they're secured. And then third, a full release of
2 all of the parties from all of the underlying litigation.

3 Your Honor, this has been the subject of very, very
4 lengthy extensive negotiations. The motion papers that we
5 filed set forth, in essence, the general terms of the
6 agreement. But on October 4th, attached to a notice under my
7 signature, we actually filed the actual plan and disclosure
8 statement that was filed both in the involuntary case. And
9 then subject to a much earlier order of this Court, we filed
10 the upgrade of the plan in the voluntary cases, really not
11 related to this motion today.

12 Your Honor, we did receive one response. It wasn't an
13 objection -- from counsel for the SunCal voluntary debtors, Mr.
14 O'Keefe. I don't see him in the courtroom. It's possible he's
15 on the phone but I don't know whether he is or not.

16 THE COURT: Let's find out. Mr. O'Keefe, are you
17 anywhere to be heard? Apparently, he's not on the line.

18 MR. PEREZ: Okay. Thank you, Your Honor. And
19 basically, he raised two points. One, he wanted to make sure
20 that our settlement agreement was subject to the approval of
21 the plan in the SunCal cases which, of course, it was. It said
22 it in there. We filed a brief response saying that it was.
23 And second, he wanted some additional language in the order
24 making sure that there was no prejudgment as to the
25 jurisdiction of the California court which we've included in

1 the order.

2 We filed yesterday a very, very short declaration from
3 Mr. Brusco. For all intents and purposes, Your Honor, the
4 matter is really not contested because I think we've addressed
5 the two issues that he raised. And they really weren't an
6 objection but were more by means of clarification. So unless
7 the Court has any questions, we would request entry of the
8 order.

9 THE COURT: I don't have any questions in respect of
10 the matter before me. But I do have a question as it relates
11 to the continued controversy with the plaintiffs represented by
12 Mr. O'Keefe and the degree to which that represents a threat to
13 the successful conclusion of the cases that are the subject of
14 the separate settlement agreements that I have already approved
15 and that I'm about to approve.

16 MR. PEREZ: Your Honor, I think that -- just by way of
17 background. There is a pending appeal in the Second Circuit on
18 Your Honor's two orders that were affirmed by Judge Hall.
19 There is the appeal in the Ninth Circuit with respect to the
20 order -- the back order. There is a second appeal pending at
21 the BAP with respect to the proofs of claim that were filed by
22 Lehman. There is currently a motion which has been briefed --
23 we referenced it in the footnote -- that has not been decided
24 or I don't even believe has been argued in which the SunCal
25 voluntary debtors are seeking to stay everything until relief

1 from stay is obtained in these cases. And then there are
2 plans. They have filed a plan with respect to all voluntary
3 and involuntary debtors. And we have filed a plan with respect
4 to all voluntary and involuntary debtors.

5 So, Your Honor, not being the person directly involved
6 with it, I think that there is a significant possibility that
7 there might be some interference, if you will, as a result of
8 the controversy with the SunCal voluntary debtors.

9 THE COURT: Are any conversations underway or
10 contemplated that might bring about a global resolution of all
11 issues in the cases?

12 MR. PEREZ: Your Honor, there have been conversations
13 that have gone on between Mr. Pachulski and Mr. Soto and
14 counsel for Mr. Couchot, Mr. O'Keefe's partner. There have
15 been conversations that have gone on from time to time with
16 respect to resolving portions of the matter, with respect to
17 solving things a little bit more generally. But to my
18 knowledge, there are no what I would refer to current ongoing
19 global discussions. But there are certainly discussions very
20 frequently with respect to particular issues and sometimes more
21 global aspects.

22 THE COURT: Okay. Thank you for that. I've looked at
23 Mr. Brusco's declaration and this is essentially uncontested
24 now. And unless someone wishes to be heard on the subject, I'm
25 prepared to approve this.

1 MR. O'DONNELL: Your Honor, Dennis O'Donnell again
2 from Milbank for the official committee. We did file
3 statements for this one, Your Honor, as we have in the past.
4 SunCal is something we've been following very closely. Our FAs
5 are heavily involved in the business decisions being made here.
6 And notwithstanding the status of potential issues that
7 confront getting this approved as part of the plan, we believe
8 that the settlement set forth in the motion is a good
9 settlement again and it should be approved by the Court.

10 THE COURT: Fine. I'm approving it.

11 MR. PEREZ: Thank you, Your Honor. May I be excused?

12 THE COURT: Yes.

13 MR. PEREZ: Thank you.

14 (Pause)

15 THE COURT: Good morning, Mr. Miller.

16 MR. RALPH MILLER: Good morning, Your Honor. I'm
17 Ralph Miller from Weil Gotshal & Manges here for Lehman
18 Brothers Holdings Inc. known as LBHI and Lehman Brothers
19 Special Financing Inc. known as LBSF. On the approval hearing
20 for a settlement with Societe Generale and disputes arising
21 from transactions known as Libra and MKP Vela -- I'm going to
22 refer to Societe Generale as SG. First, I'm pleased to report
23 that we have resolved the last of the two objections this
24 morning in discussions with Mr. Eric Schaffer. So there are no
25 objections to this motion pending. But I do need to take a

1 moment to explain the basis for resolving these objections and
2 some changes to the order, if I may, Your Honor.

3 THE COURT: Sure.

4 MR. RALPH MILLER: May I approach, Your Honor, to
5 provide a couple of copies of the revised order to the Court?

6 THE COURT: You may approach.

7 (Pause)

8 MR. RALPH MILLER: There are two (indiscernible).
9 We'll talk about one, (indiscernible) motion.

10 Your Honor, after months of intense negotiations with
11 SG, the creditors' committee and LBSF have achieved a
12 settlement that will bring at least 425 million dollars of net
13 value into the LBSF estate. And the preserves claims of LBSF
14 that could bring in an additional approximately seventy-two
15 million dollars. Two limited objections were filed with the
16 settlement, one by the Libra trustee, which is Bank of America,
17 and one by the MKP Vela trustee which is the Bank of New York
18 Mellon Trust Company. Through negotiations yesterday and this
19 morning, those objections were resolved. The order I have
20 passed up is redlined to reflect the changes made last night.
21 And it has a handwritten edition that was negotiated this
22 morning which I'd like to read into the record. Our proposal,
23 if it's acceptable to the Court, is for us to bring the Court a
24 corrected version this afternoon that reflects all of these
25 changes rolled into the order.

1 THE COURT: Yes. That's fine.

2 MR. RALPH MILLER: The changes, Your Honor, all have
3 to do essentially with the future of the matter and it may make
4 sense if I take just a moment to explain to the Court what is
5 being resolved and what is not being resolved by the
6 settlement.

7 The Court's already aware of the structure of the
8 Libra transaction because it was the subject of an evidentiary
9 hearing concerning a letter agreement with Deutsche Bank that
10 dealt with a possible assumption of the Libra deal by Deutsche
11 Bank and because cross-motions for summary judgment were argued
12 but not yet decided concerning a purported determination of the
13 Libra transaction. Fortunately, the transaction documents and
14 the MKP Vela transaction are, for all material purposes,
15 virtually identical to those in Libra.

16 For the record, let me explain briefly what the parts
17 of the transaction are that are being settled and what remains
18 open. As the Court will recall from Libra, these transactions
19 have certain basic components. First, there is a special
20 purpose entity that is created for each transaction. Those
21 were called Libra CDO Limited, in the case of the Libra
22 transaction; MKP Vela CDO, Ltd. for that transaction.

23 Assets were put into these special purpose vehicles
24 through the sale of notes and the special purpose vehicles
25 entered into credit default swap agreements in October and

1 November of 2006 with LBSF that gave credit protection to LBSF
2 keyed primarily to the performance of certain mortgage pools.
3 As we all know, mortgages did not perform well between 2006 and
4 2008. So the amount that would have been due to LBSF at the
5 time of the LBSF filing for protection in October of 2008 was
6 very large and was expected to increase. The Court may recall
7 that a document called a "Green sledge declaration" was
8 presented to the Court in the hearing on the letter agreement
9 with Deutsche Bank which estimated the value of payments
10 expected under the Libra credit default swap agreement alone
11 would exceed 800 million dollars.

12 In addition to money raised through notes, these
13 special purpose vehicles also had a second source of funding
14 known as the senior swap agreement which was provided by SG for
15 both transactions. LBSF contends that the purported
16 terminations of these transactions in October of 2008 were
17 invalid because they did not comply with certain requirements
18 in the documents for the termination procedures. If these
19 transactions were not properly terminated, SG would be exposed
20 to payment of many hundreds of millions of dollars. The assets
21 left in the special purpose entities would also be subject to
22 depletion if the transactions are not properly terminated.

23 As explained in detail in the motion, the settlement
24 agreement and the order, this settlement covers the exposure of
25 SG on its senior swap. While preserving the right of LBSF and

1 SG as assignee of LBSF to recover the assets that remain in the
2 transaction. Most of the changes, Your Honor, have to do with
3 the possibility of this -- what's referred to as future
4 litigation and how that is being dealt with in the order and
5 the agreement.

6 At this point, Your Honor, I'd like to yield to Mr.
7 Eric Winston, counsel for the official committee of unsecured
8 creditors for an explanation of the committee's position. And
9 then I believe Mr. Steven Wolowitz wants to explain the
10 position of SG on the (indiscernible) briefly. And that will
11 conclude the presentations for the motion unless the Court has
12 questions.

13 I do want to actually -- I have one more thing. I do
14 want to read from, if I might, into the record, this
15 handwritten change.

16 THE COURT: All right.

17 MR. RALPH MILLER: -- is being made. The handwritten
18 change, Your Honor, is on the last paragraph of the order. And
19 since I believe all of that last paragraph is new since the
20 filed version, I'll read it all in context if I may briefly.
21 It's titled "Reservation of Rights with Respect to Future
22 Litigation". "Nothing set forth in this order shall impair or
23 affect any rights, claims or defenses of the other Libra
24 parties with respect to the Libra termination claim or the
25 Libra priority claim or any of the rights, claims or defenses

1 of the other Vela parties with respect to the Vela termination
2 claim or the Vela priority claim" -- and this is the
3 handwritten edition -- "or any other rights, claims or defenses
4 of the other Libra parties or the other Vela parties in any
5 litigation that the debtors or SG may bring related to the
6 distribution of the remaining Libra assets or the remaining
7 Vela assets." I should note that there are some capitalized
8 terms here which are defined in the order or the attached
9 settlement agreement.

10 (Pause)

11 MR. RALPH MILLER: I'm sorry. I believe I read in a
12 word that was crossed out, Your Honor. The word "may" was
13 crossed out in this document. But we will correct it. Okay.
14 I'm sorry. That phrase should be "that the debtors or SG bring
15 related to the distribution", Your Honor.

16 And now, Mr. Winston.

17 MR. WINSTON: Good morning, Your Honor. Eric Winston
18 of Quinn Emanuel Urquhart & Sullivan on behalf of the
19 creditors' committee. The committee supports the settlement
20 and requests that the Court grant the motion. By virtue of the
21 settlement, the debtors' estate will obtain 370 million dollars
22 in cash within a very short period of time with a guaranty of
23 an additional seventy-five million dollars. This comes with a
24 consensual resolution with Societe Generale which would
25 otherwise be expected to vigorously contest, as they have

1 already the termination claim. In addition, the settlement
2 allows the estate the opportunity to recover up to
3 approximately seventy-two million dollars, as Mr. Miller
4 described. Thus, the potential benefit to the estate is in
5 excess of a half a billion dollars.

6 The committee intervened in the Libra litigation last
7 year, participated in the summary judgment proceedings. And
8 the committee's counsel, financial advisors and members have
9 been involved in lengthy negotiation with the debtors and
10 Societe Generale. The product of this experience has resulted
11 in a settlement and the committee believes that the settlement
12 is in the best interest of the estates and general unsecured
13 creditors.

14 Unless Your Honor has any questions, that's the extent
15 of my presentation (indiscernible).

16 THE COURT: Thank you.

17 MR. WINSTON: Thank you.

18 MR. WOLOWITZ: Good morning, Your Honor. Steven
19 Wolowitz for Societe Generale. Your Honor, SG supports and
20 agrees to the changes to the settlement agreement and the
21 proposed order and the conforming changes to the exhibits that
22 the debtors and the objecting parties have agreed to. That's
23 the only statement for the record.

24 THE COURT: It's a very brief statement. I accept
25 that as a model for others to follow.

1 MR. RALPH MILLER: Your Honor, the statement of Mr.
2 Wolowitz reminds me that we do need to clarify for the record
3 that in addition to some changes in the order, there have been
4 changes agreed to in the settlement agreement and some of the
5 implementing documents. And those will also be reflected in
6 the final to be given to the Court this afternoon.

7 THE COURT: Okay. I have a couple of questions, Mr.
8 Miller. And, really, it doesn't go to approving the settlement
9 which is now a consensual settlement that clearly offers
10 substantial benefits to the estate. So as to that, there's no
11 issue.

12 I have a pure question about case administration. I
13 have currently pending cross-motions for summary judgment that
14 I have happily disregarded for the past, I think, nine months.
15 And I may be wrong as to the exact time period. But I was
16 first notified by counsel quite a while ago that because
17 settlement discussions were proceeding and the parties were
18 making significant progress that I might put my pencil down in
19 respect of the pending summary judgment decision. I now see
20 that the issue of effective termination remains an open issue
21 or at least as it relates to certain aspects of the settlement.
22 To what extent, if at all -- and I think the answer is no but
23 if the answer is yes, I need to know. To what extent, if at
24 all, do the parties expect that the termination issue will be
25 resolved in the context of pending motions for summary

1 judgment? I think the answer is it won't be. But if the
2 answer is it will, what, if anything, more is expected of the
3 Court other than simply rendering a decision?

4 MR. RALPH MILLER: Your Honor, first of all, nothing
5 more is expected of the Court on those pending motions at this
6 time. Let me explain very briefly how the debtors --

7 THE COURT: I think the "at this time" clause is a
8 problem.

9 MR. RALPH MILLER: Well, let me explain how the
10 debtors see this moving forward. The debtors are always
11 anxious to try to work by cooperation and agreement if they
12 possibly can. After this resolution, the debtors hope that we
13 will be able to develop a dialogue with the other parties which
14 includes the trustees and the noteholders or their
15 representatives. There is some difficulty, Your Honor, in
16 these transactions actually finding all the noteholders and
17 determining who can speak for them. If we're able to achieve
18 that, our goal obviously would be to see if there's some sort
19 of consensual resolution which would mean that there will be
20 nothing the Court would ever have to decide. If there's not a
21 consensual resolution, the termination issue is somewhat
22 different between Libra and MKP Vela. So if Libra were
23 resolved by agreement then these summary judgment motions would
24 clearly become essentially moot. If Vela has to be heard,
25 there will need to be new -- probably discovery and some

1 motions because there is a discovery issue in Vela that may
2 have to be resolved or may not. It might be resolved by
3 agreement.

4 There is a remote possibility which I believe is
5 unlikely that the other parties might agree to go ahead and
6 basically adopt by reference the pleadings that were filed by
7 SG and ask the Court to reactivate the pending motions for
8 summary judgment. I think in that case, we would treat them as
9 a new filing for summary judgment but we probably would prefer
10 not to have all the papers discarded in the unlikely event that
11 that happens. If that occurred, essentially the same issues
12 that have already argued and presented would simply be
13 presented to the Court on that issue. But that would require
14 agreement of other parties and they would have to be convinced
15 that the arguments they want to make are arguments that have
16 already been made by SG. So in that regard, I think our
17 request would be please don't discard your files. Please do
18 treat these motions as inoperative at this point and we --

19 THE COURT: Did you say inoperative?

20 MR. RALPH MILLER: Inoperative, yes, Your Honor. And
21 if you wish to remove them in some administrative way from the
22 docket, that's fine. But in full disclosure, we really believe
23 those issues were well framed. The debtors feel strongly that
24 we were entitled to summary judgment. We feel that still, like
25 we're not able to settle, we're going to be brining that issue

1 back to the Court in very much the same form that you've
2 already seen. And then, of course, we would not like for the
3 Court to have to reinvent any wheels if that issue does not get
4 resolved by agreement.

5 THE COURT: For docket control purposes, I rather wish
6 that we could come up with a way for this to be removed from
7 the docket without prejudice so that it could be restarted at
8 some point in the future only because I have to track pending
9 matters that aren't resolved.

10 MR. RALPH MILLER: Your Honor, I think we will need to
11 confer briefly with all the parties who have interest in the
12 (indiscernible). Certainly, that makes sense to remove it for
13 administrative purposes so it's no longer being tracked. And
14 it's certainly not in our view anything that would be
15 appropriate to be decided until the other parties who may want
16 to weigh in get a chance to decide what position they want to
17 take.

18 THE COURT: Okay. My next question was to the Vela
19 matter which I didn't learn about until the summary judgment
20 motion was filed. I may have learned about Vela in the context
21 of Libra but I don't remember knowing about it. And what's not
22 clear to me is what if the litigation with respect to Vela
23 which as been described weakly in the moving papers will be
24 brought or is that simply a reservation of rights to bring that
25 litigation?

1 MR. RALPH MILLER: Your Honor, there's a tolling
2 agreement involving Vela that tolls avoidance actions, ipso
3 facto claims and also would toll this termination claim. And
4 we actually believe the termination claim doesn't need to be
5 tolled because there's no statute of limitations issue in the
6 contract claim.

7 So whether the Vela case even needs to be brought
8 would be a result of these discussions we hope to be able to
9 have. I do understand that the Vela noteholders are somewhat
10 more available and accessible than the Libra noteholders have
11 been. We understand that, we don't have details, that more of
12 them have been in contact with the trustee. So we're somewhat
13 optimistic that we may be able to move more rapidly toward a
14 consensual agreement if that's possible in Vela. And, of
15 course, there is a remote possibility, Your Honor, that the
16 parties might agree to an alternative dispute resolution
17 proceeding of some kind. We don't think that's necessary, of
18 course, but that is another option.

19 While all those are proceeding, since there is a
20 tolling agreement, our intention would be not to put another
21 case on the Court's docket. And if a case did come onto the
22 Court's docket, it would be focused on the issues that the
23 parties felt needed to be brought to the Court for decision.

24 THE COURT: Okay. Now, with some trepidation, I'm
25 going to mention something because it goes to docket control.

1 When I learned that there was a settlement that was being
2 documented in the context of the Libra case, I withheld the
3 issuance of a certain decision in Harrier and Ballyrock. That
4 decision is, for all practical purposes, ready to issue. The
5 principle reason that I withheld issuing my decision is that I
6 did not want any aspect of that decision to affect what I
7 understood to be sensitive ongoing negotiations in Libra. I
8 intend to issue that decision. It's just a question of when.

9 MR. RALPH MILLER: Well, Your Honor, I'm well aware of
10 those overlapping issues. The same sensitive issues are now
11 part of the negotiations with remaining parties in these
12 transactions. And I think sometimes uncertainty is beneficial
13 in negotiations. Sometimes it's not. So obviously, we
14 don't -- well, it's the Court's decision on what you want to
15 do. But in our view, the same sensitive issues are still being
16 discussed. And the Court may recall -- and this is sort of a
17 technical issue -- that the senior swap was written so that it
18 did not cover termination payments. The SG settlement
19 essentially reflects only the issues related to the inadequacy
20 of the termination mechanism. It does not reflect one way or
21 another the value of what's called the priority claims. And
22 those claims involve the ipso facto doctrine the Court has
23 already dealt with in part in the NY Sapphire decision of
24 January 25th. They also involve certain avoidance actions that
25 have recently been filed that are essentially alternative

1 rights to recovery in the event that those are interpreted in
2 certain ways. The Ballyrock and Harrier decisions have impact
3 on some of those same issues particularly under New York law.
4 And for that reason, this settlement really leaves all of those
5 issues on the table and open and for discussion. And this
6 settlement does not reflect any valuation or interaction with
7 those issues one way or another. So the uncertainty remains
8 and our hope would be that we can have some discussions in the
9 present environment and try to see what comes from that.

10 THE COURT: Well, to the extent uncertainty is
11 helpful, I'm going to keep things uncertain for a while longer
12 but not much longer. And you have sixty days of uncertainty.
13 I hope you can use it wisely.

14 MR. RALPH MILLER: Thank you, Your Honor. Mr.
15 Schaffer, I think, wanted to --

16 MR. WOLOWITZ: I'm sorry. Could I just -- before Mr.
17 Schaffer, Your Honor -- Steve Wolowitz for SG.

18 THE COURT: Yes, Mr. Wolowitz?

19 MR. WOLOWITZ: Just --

20 THE COURT: I just complimented you on brevity.

21 MR. WOLOWITZ: I hope I'll be equally brief this time.
22 One slight modification to what Mr. Miller said with respect to
23 the pending Libra adversary proceeding. SG, of course, if the
24 settlement agreement is approved, would be dismissed from that
25 action.

1 THE COURT: Yes, of course.

2 MR. SCHAFFER: Hopefully just as brief.

3 THE COURT: Mr. Schaffer?

4 MR. SCHAFFER: Your Honor, Eric Schaffer for the Bank
5 of New York Mellon Trust Company, trustee on the MKP Vela. In
6 our limited objection, we expressed our concerns that the
7 settlement not bind parties in any promised but not yet issued
8 future litigation. The amendment to the order as has been
9 presented to the Court addresses our concern.

10 THE COURT: Fine. I'm pleased to hear that. Is there
11 anyone else who wishes to be heard at this point?

12 MR. JOHNSON: Yes, Your Honor. Good morning, Your
13 Honor. Michael Johnson from Alston & Bird on behalf of Bank of
14 America as the Libra trustee. Your Honor, I just wanted to
15 address briefly some of the issues that have just been
16 discussed the pending motions in respect of termination of the
17 Libra swap. Just to clarify something that Mr. Miller said, my
18 client and the Libra CDO are actually parties to the pending
19 transaction. And I do not have any authority from my client as
20 of today here and now to stand down on those motions. In light
21 of the concerns that Your Honor has expressed about the Court's
22 docket and the statements Mr. Miller just made about a desire
23 to have negotiations to see whether those motions can be
24 resolved, I'm prepared to go back to my client and talk about
25 those things. But I just wanted to clarify today for the

1 record, Your Honor, that right here right now I don't have any
2 authority to consent to withdrawing those motions on behalf of
3 my clients even on a without prejudice basis. But again, I
4 will go back and talk to my clients about that and talk to Mr.
5 Miller about it as well.

6 THE COURT: Okay. Thank you for that. I'll ask one
7 more time. Is there anyone else who wishes to be heard on this
8 at this point? Apparently not.

9 The motion for approval of the settlement is granted
10 in accordance with the form of order that has been handed
11 portions of which are handwritten and the handwritten portions
12 have been read into the record by Mr. Miller. I'm pleased that
13 the parties have been able to reach what appears to be a very
14 favorable settlement from the estates' perspective. One of the
15 aspects of the Libra case, and I gather Vela is comparable,
16 that may not be apparent from the relevant presentation today
17 is that the transactions that underlie the settlement are of a
18 rather complexity that is beyond that of (indiscernible). It's
19 extraordinarily very hard to understand third party track. And
20 the arguments made by both LBSF and SG in connection with the
21 summary judgment motion were extraordinarily well presented.
22 And the issues are issues of first impression and hopefully the
23 parties will agree to settlements in the other matters
24 including Vela. It is apparent to me as noted in the motion
25 papers that any resolution of this in Court is one that will

1 not stop here and it will involve levels of appeal and expense
2 and ongoing risk. And so for that reason, I am delighted to
3 approve the settlement and recognize that it represents an
4 extraordinary effort by the lawyers and other advisors who have
5 worked to develop I think a very sound resolution to this
6 ongoing dispute. And for that reason, I approve it.

7 MR. RALPH MILLER: Thank you, Judge.

8 THE COURT: Mr. Miller?

9 MR. HARVEY MILLER: Harvey Miller again.

10 THE COURT: Oh. If anyone wishes to be excused in
11 connection with this matter or other matters that we've heard,
12 you can leave.

13 (Pause)

14 MR. HARVEY MILLER: I was about to say off the record,
15 Your Honor. It's not often I can follow my father to
16 (indiscernible).

17 THE COURT: Okay. I'm the only one that laughed,
18 though.

19 (Pause)

20 MR. HARVEY MILLER: If Your Honor please, this is item
21 7 on the agenda today. It's the debtors' motion pursuant to
22 Section 105(a) of the Bankruptcy Code to stay prosecution of
23 avoidance actions as proposed in the motion and to extend the
24 time to serve summonses and complaints and to file the
25 avoidance actions.

1 Your Honor, in the context of the size and complexity
2 of the bankruptcy cases in the Lehman enterprise and the
3 thousands of transactions that have to be analyzed amidst the
4 many other complex and difficult tasks that the debtors have
5 had to undertake, the statute of limitations prescribed by
6 Section 546(a) do not present an adequate period of time to do
7 all the diligence and investigation that would normally occur
8 in connection with the prosecution of avoidance actions under
9 the Bankruptcy Code or otherwise.

10 As a result, the debtors worked with the -- closely
11 with the creditors' committee in an effort to preserve every
12 potentially collectible asset of the debtors and not to incur
13 unnecessary expenses of litigation and therefore undertook a
14 major effort to persuade potential defendants to enter into
15 agreements tolling the application of the statute of
16 limitations. That effort was largely successful and there have
17 been over 230 tolling agreements that have been agreed to and
18 executed covering hundreds of potential defendants.

19 However, for lack of time, logistical problems and, in
20 some cases, positions asserted by potential defendants, the
21 debtors were compelled to commence approximately fifty-eight
22 adversary proceedings prior to the expiration of the statute of
23 limitations. These adversary proceedings were commenced to
24 assure that no potential real claim would be lost because of
25 the expiration of the statute of limitations.

1 Diligence as to all potential claims is ongoing. It
2 is the debtors' intention to the extent feasible to avoid
3 substantial litigation with the attending costs and
4 expenditures of time that would be involved in such litigation
5 by seeking to resolve claims in a more expeditious manner and
6 thereby promote judicial economy.

7 The requested stay would be in the best interest of
8 all parties and the administration of the cases. Indeed, after
9 further diligence and where appropriate, Your Honor, and
10 warranted, the debtors may discontinue the assertion of
11 avoidance claims. To effectuate that intention and consistent
12 with the precedent in this circuit and elsewhere, the debtors
13 have made the instant motion. The debtors propose that the
14 stay of prosecution be for an indefinite period but subject to
15 the right of any avoidance action defendant for cause shown to
16 move before the Court to vacate or modify the stay. The
17 debtors would also have the right to terminate the stay should
18 they deem it appropriate to move forward with the prosecution
19 of any avoidance action.

20 In addition, as to the five avoidance actions, the
21 debtors request an extension of time within which to complete
22 service of process upon the main defendants pursuant to Rule
23 4(m) of the Federal Rules of Civil Procedure as incorporated
24 into the bankruptcy rules. The debtors request that a sixty
25 day extension beyond the normal 120-day service period

1 specified in Rule 4(m). A stay of time to complete service is
2 necessary as there are a number of transferees whose identities
3 are not readily available to the debtors. They are noteholders
4 who received distributions made by the debtor to their
5 indenture trustee that were thereafter distributed to the
6 individual noteholders. The debtors need additional time and
7 perhaps third party discovery to identify such noteholders and
8 to complete service.

9 In (indiscernible), Your Honor, this is a simple
10 motion. It seeks a practical solution to a situation which is
11 inherent in cases of size and complexity of these cases. Many
12 of the potential defendants agreed by entering into the tolling
13 agreements that have been executed and agreed to.

14 In connection with the fifty-eight adversary
15 proceedings commenced, only eight of the main defendants have
16 objected to the motion. The remaining defendants did not
17 object. And of the eight objections, Your Honor, two are
18 limited objections. The objections of Deutsche Bank and
19 Canadian Imperial Bank of Commerce are limited objections
20 seeking a specific limitation on the stay in number of days.

21 The granting of the stay is provident and will result
22 in no prejudice to any of the adversary parties. All rights
23 are reserved. And a lapse of any time caused by the stay will
24 not be used to the disadvantage of any avoidance action
25 defendants. As noted, any avoidance action defendant may seek

1 to modify or vacate the stay for cause shown. There is no
2 intention to prejudice any party but rather provide the
3 opportunity to promote judicial economy and, at the same time,
4 explore more expedient means to resolve these cases.

5 There can be no dispute, Your Honor, that the granting
6 of the motion is within the sound discretion of the Court. The
7 Court has the inherent power to issue such a stay and we have
8 cited the authorities in our submission papers. And as Your
9 Honor is undoubtedly aware, in cases before the bankruptcy
10 court in this district, in the Delphi Corporation case and in
11 the Enron case, Judges Drain and Gonzales did extend the
12 prosecution -- did stay the prosecution of cases. In the
13 Delphi case, there were more than 780 cases which were
14 stayed -- prosecution was stayed for over seventeen months and,
15 similarly, for extended periods in the Enron case.

16 Debtors filed a reply to the objections, Your Honor, a
17 rather extensive reply which dealt with the general contentions
18 of the objectors and some specific contentions of the
19 objectors. I can go through that but I imagine Your Honor
20 would like to hear from the objectors.

21 THE COURT: I would. And I've also read the papers.

22 MR. HARVEY MILLER: Thank you, Your Honor. So I will
23 turn over to the objectors. I assume the creditors'
24 committee -- you may want to hear from them now or after.

25 THE COURT: Does the committee wish to wait or do you

1 want to jump on now?

2 MR. O'DONNELL: I think we can state our position now,
3 Your Honor. Your Honor, Dennis O'Donnell again from Milbank
4 for the official committee of unsecured creditors. We filed a
5 statement in support of this motion, Your Honor. As Mr. Miller
6 indicated, we worked closely with the debtors and in terms of
7 the whole avoidance action process. We intended to
8 (indiscernible) the order as modified (indiscernible) our right
9 to participate and to assure, essentially, that these actions
10 are prosecuted with all of the appropriate (indiscernible)
11 turns out to be the right action to take. We believe that of
12 all the objections are adequately addressed by the provision in
13 the order that permits a defendant to come to this Court for
14 good cause shown to seek relief. All of the objections are
15 variations on the theme of it's too long or we'll be
16 prejudiced. If, in fact, there is a long delay or if there is
17 prejudice to be shown, they can come to the Court and ask the
18 Court for a relief from the stay.

19 So for that reason, we believe that those objections
20 should be overruled and the stay granted as requested.

21 THE COURT: Okay. I guess I'll hear from the
22 objectors one at a time. I can't tell how many ways you're
23 here representing objecting parties but I'll take them in no
24 particular order. Whoever gets to the podium first.

25 (Pause)

1 MR. TOP: Good morning, Your Honor. Frank Top of
2 Chapman & Cutler representing U.S. Bank, National Association,
3 as the trustee in a lot of these things -- transactions. And
4 again, we filed papers in connection with this and
5 (indiscernible) to support (indiscernible). So I'm not going
6 to dwell too much on things that we've already said in our
7 papers. Just to point out that, really, the burden is upon
8 them to demonstrate the need for a stay. And I don't doubt the
9 fact that these are very, very complex transactions and there's
10 a lot of adversary proceedings and the like. Nonetheless, the
11 defendants in these also have rights that need to get these
12 proceedings moving as well.

13 THE COURT: Well, how are the defendants' rights
14 adversely affected by the stay when there's the ability for
15 caution to obtain relief?

16 MR. TOP: Well, because, first of all, to the extent
17 that a particular defendant is going to move the Court to do
18 so, it's going to be one particular defendant in what might be
19 a proceeding that has hundreds of defendants. I think one of
20 those -- one of the adversary proceedings names at least ninety
21 noteholders and eight or nine different trustees and the like.

22 The stay may actually have an impact on -- from a
23 practical perspective, in terms of identifying witnesses and
24 things like that, people change jobs and the like. It also may
25 have an affect on statutes of limitations. I'm not sure but to

1 the extent that that's a concern for some people particularly
2 where they have further distributed the money to somebody else,
3 I think that needs to be taken into consideration.

4 And that whole notion that we can come in and ask the
5 Court for some relief from the stay really puts the burden on
6 us, on the defendants, in order to show --

7 THE COURT: Absolutely.

8 MR. TOP: Yeah.

9 THE COURT: Absolutely.

10 MR. TOP: But that's not where the burden --

11 THE COURT: What's wrong with that?

12 MR. TOP: -- is under the law.

13 THE COURT: But what's wrong with that?

14 MR. TOP: Because the likelihood -- and I have no idea
15 how this will play out but it seems unlikely if only one
16 defendant is seeking relief from the stay that that would be
17 granted in the context of a much bigger case. It would be much
18 harder to show cause. I have no idea one way or the other.
19 But that -- again, that's putting the burden on us where if you
20 just put a limited amount of time on a particular stay and the
21 debtors need more time, they can file a paper, too, to say,
22 look, we're coming up on our six months or four months or
23 whatever the Court decides is an appropriate period of time.
24 They can come before the Court and say, look, we need some
25 additional time to do x, y or z.

1 THE COURT: So is your principle concern that the stay
2 as requested is indefinite in duration and what you're really
3 seeking is a time limited stay? Is that your issue?

4 MR. TOP: I think that's part of it. But I also think
5 their ability just to say the stay is off unilaterally is also
6 inappropriate and that it creates again a different leverage
7 point as we try to negotiate resolutions in all these
8 particular transactions. I think it ought to be a mutual stay.
9 And what I would suggest is forget about the stay but why not
10 put together a scheduling order with respect to these
11 transactions which takes into account all of the debtors'
12 needs. They can -- if they feel they need six months in order
13 to put together a list of all the defendants and serve papers
14 and things like that, that's certainly something that people
15 can talk about. But at least, if we have a scheduling order
16 that sets forth all the dates when things are going to be due,
17 when answers need to be submitted, when third party
18 defendants -- or when defendants can submit discovery and the
19 like to the debtors that's fair, that could all be put together
20 in some kind of a scheduling order that isn't necessarily
21 written in stone but at least that all parties in the
22 proceedings know exactly what to expect.

23 And so, with that, Your Honor, that's -- I'll leave it
24 to other objectors. Thank you.

25 THE COURT: Okay. Thank you.

1 MR. PIETRANTONIO: Good morning, Your Honor. Thomas
2 Pietrantonio on behalf of Interface Cable. The objection of
3 Interface Cable is geared more towards this indefiniteness of
4 the stay, the length of the stay, Your Honor. Our concern is
5 the preservation, the (indiscernible) and the preservation of
6 evidence. Two years plus have already gone by. We don't know
7 from the proposed order what the plans are for the -- when an
8 ADR type of format will be put in place, when the matters will
9 go forward, what access we'll have to relevant evidence. It's
10 really the indefiniteness of time as counsel just said.

11 THE COURT: Okay.

12 MR. PIETRANTONIO: Thank you, Your Honor.

13 MR. PEDONE: Good morning, Your Honor. Richard Pedone
14 on behalf of Deutsche Bank Trust Company America as indenture
15 trustee. We did not object to a stay entering but we do object
16 to the unlimited nature and duration of the stay as well as the
17 shifting of burdens. We would agree with a 120-day stay with
18 the parties either coming back by consent or the debtors
19 establishing cause for the stay to continue. That's what
20 Congress intended when they established the statute of
21 limitations. So again, it's an objection to the shifting of
22 the burdens and the indefinite timetable. Thank you.

23 THE COURT: You're saying this is an issue of
24 congressional intent?

25 MR. PEDONE: I believe when statutes of limitations

1 were established, Congress did have an intent that litigation
2 proceed not that it be stayed indefinitely.

3 THE COURT: Well, the litigation has commenced so the
4 statute's really not an issue.

5 MR. PEDONE: Not if it's stayed for all purposes, Your
6 Honor. I believe that's not the equivalent of actually
7 commencing --

8 THE COURT: Well, I read the -- proscribed by Weil
9 Gotshal in response to the objections and agree with the
10 position expressed by Weil Gotshal and (indiscernible) think
11 it's (indiscernible) attributed to that as well. The statute
12 as proposed has already served its purpose. Parties understand
13 now precisely the nature of the claims being asserted. And
14 you're on notice. You can preserve your evidence. You can do
15 whatever is necessary to protect yourself. The only thing
16 that's happening is a period during which everybody is
17 (indiscernible) including the defendants.

18 MR. PEDONE: Which is why we agree with the stay for a
19 definite period of time.

20 THE COURT: I'm simply (indiscernible) with your
21 notion this is somehow congressionally sanctioned.

22 MR. PEDONE: I accept that.

23 THE COURT: Your objection is not congressionally
24 sanctioned in my view.

25 MR. PEDONE: I respectfully restate my position, Your

1 Honor. Thank you.

2 THE COURT: Okay. Fine.

3 MR. DASH: Good morning, Your Honor. Andrew Dash,
4 Brown Rudnick, on behalf of Loreley Financing (Jersey) Nos. 8,
5 15 and 24 Limited. We join in the concern expressed by other
6 objecting counsel as to the indefinite nature of the proposed
7 stay and the unilateral ability of the debtors to declare the
8 stay lifted without any application notice to waive it. Your
9 Honor, it provides them with an advantage in a negotiation.

10 We also object --

11 THE COURT: What would you suggest would be the right
12 way for the stay to come to an end?

13 MR. DASH: Well, Your Honor, if the applicants -- if
14 the objectors are to be required -- if the defendants are to be
15 required to come to the court on cause shown, obtain a lifting
16 of the stay from Your Honor, the debtors should be obligated
17 to, on notice, explain why they think the stay should be lifted
18 and appear at a hearing and allow other parties to address that
19 issue at that time.

20 In addition, Your Honor, I would suggest that it may
21 be -- if Your Honor is inclined to grant the stay, it may be
22 appropriate under these circumstances to ask the debtors to
23 provide periodic reports on the status of their diligence, the
24 status of their negotiations efforts so that the defendants can
25 understand where the debtors are in their process rather than

1 waiting for some unknown time in the future to commence the
2 litigation. We would think a thirty or sixty-day interval
3 would be appropriate in that regard.

4 THE COURT: Okay.

5 MR. DASH: Thank you, Your Honor.

6 (Pause)

7 MR. SHULMAN: Good morning, Your Honor. Motty Shulman
8 of Boies Schiller & Flexner on behalf of BNP Paribas London
9 branch. Our objection is slightly different than all the other
10 objectors because our case is different. We're here as a
11 defendant. The debtor is a defendant in our matter. Unlike
12 all the other avoidance actions where the debtor came, filed
13 lawsuits on the eve of the statute of limitations, our lawsuit
14 was commenced about a month prior by the trustee of our
15 facility, of our bank. We remain as a defendant; the debtor
16 remains as a defendant. Subsequently, the debtor filed a
17 counterclaim naming the facility as a counter -- as an
18 interpleader defendant. This is not a situation where there's
19 nobody losing money, there's nobody being prejudiced because
20 the defendant has the money. The plaintiff simply needs a
21 little more time.

22 We have millions of dollars that are being tied up by
23 virtue of the pending litigation. The debtor comes in now and
24 says let's put this on an indefinite stay. Our money is being
25 tied up. We are prejudiced by the stay. In fact, the debtor

1 recognizes it's prejudice. In response to U.S. Bank's
2 objection, the debtor recognizes the distinction and in a reply
3 makes a distinction between a plaintiff seeking a stay which
4 the debtor says -- it cites law saying the Court should give
5 weight to it and a defendant who's coming in and seeking a
6 stay. The defendant who's coming in and seeking a stay or
7 objecting to a stay is giving less deference because there is
8 much less prejudice.

9 We object to the stay not so much in terms of the
10 limitations of the stay or the time or the other objections
11 that were raised by the other parties, but we are asking that
12 we simply be taken out from the list of Schedule A on the
13 actions that are subject to the stay because we are differently
14 situated.

15 THE COURT: Let me ask you this. My understanding of
16 the stay that's being proposed here is that it's not everybody
17 standing around with their hands in their pockets. It's people
18 simply not litigating but being permitted to engage in
19 consensual resolutions if those are possible.

20 he adversary docket in these cases was an extensive
21 docket even before the fifty-eight cases were commenced last
22 month. And many of those cases have been pending for very long
23 periods of time at no fault of the Court and no fault of the
24 parties. It's just the nature of litigation as you know.
25 You're not getting as many (indiscernible) anyway. How are you

1 really prejudiced?

2 MR. SHULMAN: Well --

3 THE COURT: Because the only you get the money quickly
4 is if you reach some kind of an agreement that resolves the
5 interpleader because parties are acting like matured bond
6 notes.

7 MR. SHULMAN: This is not a situation where there has
8 been a lawsuit filed and now we need to take a stay and pause
9 simply to engage in settlement negotiations. Before the
10 lawsuit was filed, the parties engaged in settlement
11 negotiations. Those settlement negotiations apparently were
12 unsuccessful. But --

13 THE COURT: Maybe it's time for ADR?

14 MR. SHULMAN: We proposed to the debtor that we take a
15 sixty-day stay for ADR. We have the same stipulation with
16 regard to an overcollateralization of escrow. We did propose
17 that. The debtor has rejected that. We're amenable to
18 settlement negotiations. What we are objecting to is the
19 debtor, who is a defendant over here, simply hijacking the
20 litigation to the plaintiff is giving the right to litigate in
21 the matter that they choose. And it's different than all the
22 other fifty-seven avoidance actions that the debtor has filed.
23 All the other fifty-seven actions are actions where the debtor
24 comes in and filed a lawsuit. The defendant still has the
25 money. We don't have the money. We're a defendant over here.

1 The debtor's a defendant over here and does not deserve the
2 deference that's given to a plaintiff by seeking a stay.

3 THE COURT: All right. I understand your position.

4 MR. SHULMAN: Thank you.

5 MS. GROSSMAN: Good morning, Your Honor. Melanie
6 Grossman of Willkie, Farr and Gallagher on behalf of Natixis
7 Financial Products, LLC. I just wanted to note my appearance
8 for the record, but we joined in the papers filed by the BnP
9 and I don't have anything to add to counsel's arguments.

10 THE COURT: Okay.

11 MS. GROSSMAN: Thank you.

12 MR. TRUST: Good morning, Your Honor. Brian Trust,
13 counsel to Canadian Imperial Bank of Commerce. This is with
14 respect to the transaction; it's a synthetic CD I'll refer to
15 in the pages as Pixus (ph.). And CIBC or Canadian Imperial
16 Bank of Commerce holds the class A1 note issued by Pixus which
17 similar to (indiscernible), the CEO issuer in that transaction.

18 You know, first and foremost, we certainly hope for a
19 trial date. CIBC generally supports the debtors' request for a
20 litigation stay, like the rationale for the filing of avoidance
21 actions and we certainly understand and appreciate the debtors'
22 desire for the stay as stated on the record today as
23 (indiscernible) in the moving papers.

24 CIBC obviously has several board constituents
25 including its regulated stake holders and some disclosure

1 requirements. The primary focus of what we'd like to suggest
2 the Court consider really relate to achieving a modest balance
3 by focusing on some rational, reasonable but limited end date.

4 Not -- nothing that is either too short, nothing
5 obviously that would go out too, too far as well, but we would
6 just suggest that the order be entered and the Court consider
7 putting some reasonable end date in the order for the purpose
8 of allowing the parties to take stock of where they are, to
9 allow the parties as well as the Court and all of the parties
10 in interest to understand where we are in the stake process.

11 It strikes us that this is a, I'd say, a minor burden
12 that would be placed upon the debtors to actually have to go
13 back after some reasonable period of time. And just to be
14 clear, I'm not talking about three or six months, but some
15 reasonable period of time given the quantum of the lawsuits
16 filed to in fact move the Court to raise supplemental extension
17 and give parties in interest an opportunity at that point in
18 time to consider what their rights are as opposed to an all-
19 the-time obligation for, you know, cause shown. Because facts
20 change, circumstances change and it's impossible to -- they
21 have these litigations with them play out (sic).

22 So from CIBC's perspective, we are only focused on the
23 tenor and we think that the minor adjustment of the reasonable
24 time with the debtors would be in everyone's interest and
25 certainly preserve the interest of the estate, as well.

1 Thank you, Your Honor.

2 THE COURT: Okay. Thank you, Mr. Trust.

3 (Indiscernible) --

4 MR. WILSON: Your Honor, this is Bruce Wilson of Kutak
5 Rock appearing telephonically on behalf of Nebraska Investment
6 Finance Authority.

7 THE COURT: Okay.

8 MR. WILSON: We're the last objector, I think, to the
9 motion. And we believe we're material and different than the
10 other objectors in one respect and that is in our circumstance,
11 the debtors have committed -- it has been alleged that an
12 individual or former employee of the debtors have (sic)
13 committed actual fraud. And in that context we believe that
14 internal discovery and mediation would be insufficient because
15 we may need sworn statements -- just doing depositions, we may
16 need (indiscernible). There's currently no talking
17 preservation requirement in place.

18 So, for the reason that we believe there's been an
19 alleged actual fraud, nothing in these circumstances would
20 compel our case with an -- except if we were -- except if we
21 were staying to proceed.

22 Now, we also believe we're getting prejudice because
23 we filed the claim that the debtor owed the Nebraska Investment
24 Finance Authority a certain sum and they allege that we owe the
25 debtors a certain sum plus interest. And we believe interest

1 is accruing and we don't believe the debtors should both file a
2 claim against our claim and as for a stay, all interest is
3 accruing.

4 THE COURT: That's your position?

5 MR. WILSON: yes, Your Honor. We believe that because
6 the -- primarily, the allegation is actual fraud. But we don't
7 believe that the parties should sit back and really do nothing
8 and, you know, in terms of (indiscernible) mediation, really
9 amounts to, in our view, an insufficient measures (sic) to
10 protect and preserve evidence and to move forward.

11 THE COURT: Okay. I've heard you.

12 Are there any other objectors on the (indiscernible)?

13 MR. MILLER: I counted eight, Your Honor, and they
14 were all identified.

15 THE COURT: All right. Have you been counting? I
16 haven't. Mr. Miller, do you want to respond?

17 MR. MILLER: Very briefly, Your Honor. First, I'm a
18 little confused, Your Honor, by Nebraska, because in their
19 papers, they basically say mediation should be ordered to
20 proceed immediately. And if not successful, the stay should be
21 lifted. I think the position announced by the gentleman on the
22 phone is different from that.

23 But more importantly, Your Honor asked a key question.
24 How are any of the defendants prejudiced, particularly in light
25 of the fact, as Your Honor pointed out, adversary proceedings

1 by their nature take a long time -- nobody's fault in
2 connection with that. And we're talking about, Your Honor, 445
3 names defendants in the 58 actions. And when we are able to
4 identify the note holders in some of these transactions, that
5 number may multiply by two times. So we may be talking about
6 1,000 defendants.

7 And the objective of the stay motion, Your Honor, is
8 to avoid proceedings in this courtroom. As Your Honor pointed
9 out, there's no intention to sit around and just let time
10 expire. The effort is going to be to try and find an expedient
11 means, maybe alternative dispute resolution, to resolve these
12 claims.

13 In addition, there is further diligence that has to be
14 done with respect to all of the claims, Your Honor. It would
15 be, in our view, Your Honor, in the interest of judicial
16 economy, to avoid having constant proceedings before Your Honor
17 about discovery, about timings and schedules. The concept of
18 having scheduling orders for all of these matters, Your Honor,
19 would tie you up, I think, for weeks. And would be
20 unnecessary, particularly if we can resolve this in another and
21 easier fashion.

22 So we have 445 named defendants; we have over 230
23 towing (ph.) agreements covering hundreds of defendants. So
24 what we're talking about, Your Honor, essentially is well over
25 1,000 defendants. In terms of preservation, all the records

1 are being preserved. There is no substantive relief here that
2 would in any way affect the rights of any of the defendants.

3 The two limited objections, Your Honor, basically
4 say -- all they ask Your Honor to do is fix a time limitation.
5 Given the scope and the complexity of all of these
6 transactions, they're not simple vendor preferences, Your
7 Honor. They're very complex situations in some of the
8 situations, and some of them, frankly, are novel and have to be
9 discussed among the parties.

10 This gives us the opportunity to search out a method
11 to deal with all of these claims, and in the context that
12 there's no prejudice to anybody. Insofar as the debtors' right
13 to go forward, these are the debtors' claims. It's sort of
14 weird in my experience, Your Honor, for the defendants to
15 object to lack of prosecution of a plaintiff's action. These
16 are plaintiff's claims, clearly within the (indiscernible)
17 discretion of the Court.

18 So we would ask that Your Honor grant this motion.
19 The objectors are protected; they can come to court if there's
20 cause to modify the stay, if we're not making progress. And,
21 Your Honor, I would commit at every state of the estate or
22 every omnibus hearing, we could give Your Honor a report as to
23 where we stand in connection with avoidance actions. So in
24 that context, Your Honor, I don't believe there's any prejudice
25 and so request that the order be entered, Your Honor.

1 THE COURT: All right. Thank you, Mr. Miller.

2 I receive monthly reports from Mr. Miller's partner,
3 Peter Vimberger (ph.) concerning the progress of the ADR
4 program, which is currently underway in these cases. And those
5 letter reports are uniformly encouraging.

6 One of the modest achievements of this bankruptcy case
7 has been dedication of resources outside of the Bankruptcy
8 Court to dispute resolution. And without going into specifics,
9 I am satisfied that the ADR program is working extremely well.

10 My understanding of the motion for a stay is that ADR
11 mediation, conversation between the debtors and defendants in
12 these adversary proceedings will be taking place during the
13 period of the request in (indiscernible). I've reviewed the
14 objections to the stay and the response to those objection
15 filed by the debtors and I am satisfied that a stay is
16 absolutely desirable here and in the best interests, actually,
17 of all parties.

18 The only real issue may be complaints of individual
19 defendants, (indiscernible) being one, that somehow the stay
20 shouldn't apply to them. I'm not carving anybody out today.
21 I'm going to enter an order that will apply to all defendants
22 in all other avoidance action adversary proceedings. But I
23 note that to the extent that any party, whether it's a party
24 represented by Boies, Schiller or (Indiscernible) or any other
25 party for that matter, that is in a position to articulate

1 distinguishing characteristics that would suggest that the
2 imposition of the stay as to that party or parties is
3 inappropriate or prejudicial.

4 The order permits the filing of appropriate motion
5 papers in the hearing to consider, in effect, relief from the
6 stay. And in fact, something not particularly (indiscernible)
7 from the firm, motions for stay relief that are heard and
8 considered by bankruptcy courts every day of the week.

9 I am concerned, however, about the completely open-
10 ended nature of the stay and I note that my colleague Judge
11 Drain with Adelphi cases has entered a number of orders as
12 relating to the impositions of a stay. And I note that many of
13 the objectors have directly or indirectly raised some questions
14 as to having a stay that doesn't have an end date.

15 Independent of those objections, I had some concern
16 about a stay that doesn't have an end date. And so the
17 question becomes, what should the end date be? Three or four
18 months is too short, a year is too long. And something in
19 between there may not be (indiscernible) but it will be part of
20 the order.

21 I'm going to impose a nine-month period with the
22 understanding that within the nine-month period, there will be
23 active discussions between the debtors and the defendants.
24 There may be possible claims resolutions and presumably, an ADR
25 program that will take place within the period of time after

1 there has been sufficient active sharing of information that
2 allows for a meaningful ADR process to proceed.

3 The only thing really that the stay is doing is
4 looping the unnecessary pursuit of hostilities in this court.
5 I heard the reference to doing this by means of a scheduling
6 order and candidly, that's what I do in every one of the
7 adversary cases on my docket. One of them, and you may know
8 which case I'm talking about, involved the scheduling order
9 that calls for a trial date in March of 2012. That's a
10 scheduling order that demonstrates that litigation takes a long
11 time and as a result, it's a scheduling order that doesn't
12 answer the question before the Court.

13 As Mr. Miller both stated and implied, the Court has a
14 responsibility here to manage the docket. And the docket in
15 these extraordinarily complex cases, I believe, is unique. It
16 is unique not only in respect of the subject matter that is
17 being presented for adjudication on this morning's hearing in
18 connection with Alegra (ph.) settlement demonstrates the
19 extraordinary complexity of many of the transactions that are
20 at issue in the various litigations that are pending on the
21 adversary docket. But it also demonstrates that parties need
22 time in order to understand the strengths and weaknesses of
23 their positions and to accommodate one another in reference to
24 the actual risks the parties face.

25 I'm entering an order in the form presented with the

1 understanding that it will be a nine-month duration for the
2 stay. I do have some concern as to the unilateral ability of
3 the debtors to, in effect, declare that the stay is no longer
4 in effect.

5 I'm going to leave that provision in with the
6 understanding that the debtors' ability to do that will be for
7 good cause. And provided that there is good cause shown, and
8 I'm confident that the debtors will be in a position to do
9 that, I see no particular reason for the Court to be a
10 gatekeeper for a stay that is designed to benefit, in this
11 instance, the plaintiff.

12 Those are my comments. The motion is granted.

13 MR. MILLER: Thank you, Your Honor.

14 THE COURT: If anyone wishes to be excused now, you
15 may be excused in reference to --

16 MR. MILLER: Yes, Your Honor --

17 THE COURT: -- (indiscernible) docket.

18 MR. MILLER: -- item 8 is the (Indiscernible)
19 representing (indiscernible).

20 THE COURT: We have one of the matter relating to
21 expedited discovery.

22 MR. DEFILIPPO: Yes, Your Honor.

23 Good morning, Your Honor. Paul DeFilippo, proposed
24 counsel for the debtors, adversary 10-03547. This is a slight
25 exception to the stay, Your Honor, just to prove in this action

1 there were forty-seven transactions and there's -- the
2 collateral has been distributed. It involves the ipso factor
3 doctrine Your Honor ruled on in BNY. We seek limited expedited
4 discovery to identify the note holders who were the ultimate
5 recipients of that collateral. That information is not
6 currently in the debtors' possession. We think that shows
7 cause for the issuance of an order permitting expedited
8 discovery.

9 We've received two objections; we believe we've
10 resolved them with an amended order that was provided to Your
11 Honor in which the objectors have proved which resolves their
12 desire to have copies of the discovery served on them as well
13 as the information received and addresses confidentiality
14 issues.

15 We have one change to make to the order if Your Honor
16 is prepared to grant the motion to resolve an issue by the
17 committee that goes to the committee not being required to pay
18 for the documents when they are provided to the committee.

19 THE COURT: So it sounds as if it's all consensual at
20 this point.

21 MR. DEFILIPPO: I believe so, Your Honor, yes.

22 THE COURT: Let's just confirm that that's true. Is
23 it all consensual at this point?

24 UNIDENTIFIED SPEAKER: Yes, Your Honor, on behalf of
25 the committee.

1 MR. DOWNEY: Your Honor, Richard Downey for Deutsche
2 Bank and our concerns were addressed.

3 MR. TOP: Good morning, Your Honor. Frank Top from
4 Chapman and Cutler on behalf of US Bank National Association
5 and I can confirm that we're fine with the Court
6 (indiscernible).

7 THE COURT: Okay, that was easy. I'll enter it on
8 consent.

9 MR. DEFILIPPO: Thank you, Your Honor.

10 THE COURT: Now we're down to the SIPC --

11 MR. WILTENBURG: Yes, Your Honor.

12 THE COURT: -- agenda. Everyone who was involved in
13 the first part of this morning's calendar who wishes to be
14 excused may leave.

15 (Pause)

16 MR. WILTENBURG: Your Honor, David Wiltenburg, Hughes,
17 Hubbard and Reed on behalf of the SIPC trustee.

18 On today's calendar there are two related items. The
19 principal item is the motion of Newport Global for permission
20 to take 2004 discovery. And there's a related motion by
21 Newport to seal certain aspects of that motion.

22 And as today started, I think all parties were
23 prepared to go forward with argument on the motion. Indeed,
24 Mr. Caputo is here from SIPC, prepared to make comments and Mr.
25 Kobak was prepared to put the motion into a larger context

1 about which you'll hear more next week.

2 However, in discussions this morning, we have -- the
3 parties have been able to reach an accommodation that results
4 in adjournment of the motion without date.

5 THE COURT: Okay.

6 MR. WILTENBURG: And I'm prepared to answer any
7 questions the Court may have on that. But, the result is that
8 we don't need to address the principal motion. It may be that
9 as a technical matter the sealing motion is still on the table.

10 The sealing motion related to certain exhibits and
11 information related to the motion. The trustee -- again, it is
12 Newport's motion; the trustee has not opposed it.

13 THE COURT: I looked at Newport's motion and I saw
14 that Exhibit I was under seal. I've never seen Exhibit I. I
15 also noted that there was a paragraph that had a number of
16 blackline provisions redacted out; I've never seen the full
17 motion. It doesn't matter, I assume and because I was able to
18 get to the essence of the motion, I have no official need to
19 see it, but I would like to see the document that I haven't
20 been able to see.

21 MR. WILTENBURG: Your Honor, we'll arrange for a
22 courtesy --

23 THE COURT: Mr. Molton's here, I think he's getting up
24 to tell me I can get the document.

25 MR. MOLTON: Good morning, Your Honor. David Molton

1 for the two Newport movants from Brown Rudnick.

2 We apologize that Your Honor did not get the
3 unredacted copy. We will get those to you today.

4 THE COURT: It's possible that they came to chambers.
5 I was preparing my (indiscernible) --

6 MR. MOLTON: All right.

7 THE COURT: -- so I was looking at the document and
8 (indiscernible) system.

9 MR. MOLTON: And I don't think the redactions were of
10 a great extent in the document, so--

11 THE COURT: No.

12 MR. MOLTON: So, yeah, I just want to confirm with
13 what Mr. Wiltenburg said we did meet at his offices this
14 morning and I'm pleased to announce that we resolved the
15 matter. So the motion would be, you know, adjourned without
16 date and we'll get documentation to Your Honor. We'd
17 appreciate it if Your Honor would grant the sealing order for
18 the limited amount of confidential information that the SIPA
19 trustee had provided us.

20 THE COURT: Yes, that's granted (indiscernible).

21 MR. MOLTON: Thank you. And that's -- unless Your
22 Honor has any other questions, I'm done for today.

23 THE COURT: Great. You're excused.

24 MR. MOLTON: Thank you.

25 MR. WILTENBURG: Your Honor, I think that's the end of

1 the calendar for today. So --

2 THE COURT: I do have some questions for you, then.
3 As I reviewed the 2004 motion presented by Newport and the
4 trustee's response, I viewed the arguments to be less about
5 discovery and more about a timely disposition of the claim
6 determination in respect of any other position (indiscernible)
7 claimed customer of LBI and the intricacies of the relationship
8 with LBI and LBIE claim, the allocation of that claim and
9 matters of (indiscernible). And so what I'm interested in
10 knowing, although I don't need to hear anything that is not yet
11 ready for primetime, is whether the parties have had any
12 meaningful discussions about the timing for disposing of the
13 principal issues and dispute between parties.

14 MR. WILTENBURG: Your Honor, that has been approached
15 in a couple of ways. As the Court may recall, there was
16 initiative last March on behalf of a group of parties including
17 Newport and others similarly situated claimants whose -- who
18 have claims through LBIE. And at that time, we opposed the
19 idea of setting that litigation in motion right then because
20 the -- at the time, there was an intensive effort between the
21 LBI estate's professionals and the LBIE estate's professionals
22 to reconcile and to see whether the two enemies did indeed, as
23 in theory they -- in the ideal world they would have kind of
24 mirror image accounts of -- so that the books and records would
25 match and the extent of the customer claim would be fixed.

1 That effort resulted in allowance by the trustee of
2 the LBIE omn -- what's called the LBIE omnibus claim. That is
3 the portion of LBIE's claim that is asserted on behalf of LBIE
4 customers; that's -- the terminology for that is the omnibus
5 claim. And it was allowed in mid-September in an amount
6 exceeding six billion dollars.

7 However, the reconciliation effort is not at an end.
8 In the great mass of information underlying that six billion-
9 plus dollars in allowed claim, there are many transactions --
10 part of the uncertainty results in the mismatch between the
11 LBIE filing date which is September 15 and the LBI filing date
12 which is September 19. And it continues to be a project for
13 the professionals to sort out what happened during that
14 peculiar period of time.

15 So, that reconciliation is -- has made great progress
16 but is not at an end. And so in deference to the continuing
17 discussions, the trustee agreed to extend LBIE's time to object
18 to that partial allowance by an additional ninety days. And so
19 a lot has been but the parties, that is LBIE and LBI, are not
20 at the end of the road in getting to the point of knowing what
21 they agree on exactly and knowing what they disagree on
22 exactly.

23 And until that -- those two things are known, we
24 continue to feel that it would be premature to put litigation
25 in motion regarding the LBIE claimants. Because if it turns

1 out that there's a match between what LBIE is claiming against
2 LBI, on the one hand, and what the claimant is claiming against
3 kind of a Lehman enterprise on the other hand, it will be
4 unnecessary in those cases to address the question of whether
5 these claimants are independently customers of LBI, because
6 they're -- in effect, their derivative customer status will
7 come to the same thing from the point of view of an LBI-allowed
8 claim.

9 And so, that has been our thinking in terms of where
10 this category of disputed claims would be slotted into, you
11 know, a broader schedule covering many categories of disputed
12 claims. About which Mr. Kobak will make further remarks at the
13 hearing next Thursday.

14 THE COURT: What do you estimate is the time you're
15 (indiscernible) getting to that result?

16 MR. WILTENBURG: Well, the parties picked ninety days
17 as kind of a benchmark for that from the determination date
18 which I believe was September 16. If the professionals tell us
19 they think it's productive to extend beyond that, if -- it
20 could occur, I guess we would hope that any extension beyond
21 that would not, you know, take us to the, you know, too far
22 down the road.

23 THE COURT: Okay. Apparently my question made Mr.
24 Molton want to get up.

25 MR. MOLTON: I didn't expect to have to get up again,

1 Your Honor, but I do want to say that what -- I know Mr.
2 Wiltenburg has his position on this. We dispute many parts of
3 it; that's going to be left for another day in front of Your
4 Honor. Clearly, I think, on behalf of all the prime brokerage
5 customers who have no alleged LBI connections, we'd like that
6 heard sooner than later.

7 We believe that the legal issues, as Your Honor
8 focused on, are not necessarily dependent on the reconciliation
9 per se and the exact line items in the various accounts. And I
10 think Your Honor suggested that you may have recognized that.

11 And another point that I have to dispute because we're
12 not here to argue it, but it just -- lest silence be construed
13 as assent, we disagree that if the reconciliation matches, it's
14 an apples to apples situation. Clearly what happens overseas
15 in London and how involved my client and the other prime
16 brokerage get treated under the administrator's proposed scheme
17 or plan or what have you, may leave us much worse off in terms
18 of having our property being treated as part of the general
19 unsecured ball (ph.) and not in a preferred matter, as it is as
20 a SIPA customer, having to share it not only with other
21 customers of LBIE but also vendors and other general unsecured
22 creditors.

23 So, clearly, from our position, we don't agree with
24 Mr. Wiltenburg that it's an apples to apples and if there's a
25 pure reconciliation it doesn't make a difference. The

1 customer, I'm sure Your Honor knows since I was here two years
2 ago in front of Your Honor when this began on this issue and
3 Your Honor gave me a hard time then on the 2004 motion. I
4 think the twenty-four months has made a little bit --

5 THE COURT: I was planning on giving you a hard time
6 again.

7 MR. MOLTON: I'm sure you were, Judge. We actually
8 got a call from Mr. Wiltenburg yesterday and we were able to
9 resolve it today. I knew -- I know that you -- but in any
10 event, you know, we believe that the customer issue for these
11 prime brokerage customers is extremely important; is one that
12 can be heard and decided upon relatively promptly. And we
13 would urge the trustee to tee it up and let it go. Indeed,
14 when we talked, we had meetings with the ad hoc group last
15 March, maybe it was January through March. We were actually
16 encouraged to create proposed stipulated facts and questions of
17 law that would form the basis of a, you know, of a hearing to
18 expedite the process.

19 That, unfortunately, went nowhere as I think that the
20 trustee continued to put its weight on finding a protocol with
21 LBIE, which at this point, as Your Honor had read the papers,
22 we don't believe is ever going to occur.

23 So, I just needed to say that in light of what Mr.
24 Wiltenburg said. So, thank you, Your Honor.

25 THE COURT: Okay. What we've just heard is just

1 colloquy on the part of both the trustee and Newport in

2 response to a question that I'm sorry I asked.

3 We've got -- is there anything new for today?

4 MR. MOLTON: Your Honor, I think not.

5 THE COURT: Okay. We'll adjourn until the 2 o'clock
6 adversary block out (ph).

7 (Whereupon these proceedings were concluded at 11:48 a.m.)

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I N D E X

R U L I N G S

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I N D E X, cont'd

R U L I N G S

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a
true and accurate record of the proceedings.

LISA BAR-LEIB

AAERT Certified Electronic Transcriber (CET**D-486)

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Date: October 21, 2010